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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 RUDOLPH ELLIS,

11 Petitioner,

12 v.

13 RALPH DIAZ,

14 Respondent.
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No. 1:20-cv-00134-NONE-EPG-HC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
PETITIONER SIXTY (60) DAYS TO
ASSERT CLAIMS UNDER 42 U.S.C. §
1983, AND DIRECTING CLERK OF
COURT TO SEND PETITIONER
PRISONER CIVIL RIGHTS COMPLAINT
FORM AND APPLICATION TO PROCEED
IN FORMA PAUPERIS

(Doc. No. 5)

18 Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to
19 28 U.S.C. § 2254. On January 31, 2020, the assigned magistrate judge issued findings and
20 recommendations recommending that petitioner be granted leave to convert the habeas petition
21 he filed to initiate this action into a civil rights action under 42 U.S.C. § 1983, because the claims
22 asserted therein concern his conditions of confinement and do not challenge any aspect of his
23 conviction and sentence nor seek his release from custody. (Doc. No. 5). The findings and
24 recommendations, along with a blank prisoner civil rights complaint form and an application to
25 proceed in forma pauperis, were served on petitioner and contained notice that any objections
26 thereto were to be filed within thirty (30) days of the date of service. To date, petitioner has filed
27 no objections, and the time for doing so has passed.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
2 de novo review of the matter. Having carefully reviewed the entire file, the court concludes that
3 the findings and recommendation are supported by the record and proper analysis.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The findings and recommendations issued on January 31, 2020 (ECF No. 5) are
6 ADOPTED;
- 7 2. The Clerk of Court is DIRECTED to send petitioner a prisoner civil rights complaint
8 form and an application to proceed *in forma pauperis*;
- 9 3. Petitioner is GRANTED **sixty (60) days** from the date of service of this order in
10 which to assert claims under 42 U.S.C. § 1983;
- 11 4. Petitioner shall submit an application to proceed *in forma pauperis*, completed and
12 signed, or in the alternative, pay the \$400.00 fee for the civil rights action within **sixty**
13 **(60) days** from the date of service of this order; and
- 14 5. If petitioner fails to assert claims under 42 U.S.C. § 1983, the instant habeas action
15 will be dismissed without prejudice to petitioner refiling his claims in a separate
16 § 1983 action.

17 IT IS SO ORDERED.

18 Dated: April 1, 2020

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UNITED STATES DISTRICT JUDGE